FAIR POLITICAL PRACTICES COMMISSION

Memorandum

To: Chairman Getman and Commissioners Downey, Knox, and Swanson

From: C. Scott Tocher, Commission Counsel
Luisa Menchaca, General Counsel

Re: Adoption of Emergency Regulation Regarding Section 85702, Contributions from Lobbyists; Proposed Emergency Regulation 18572

Date: February 28, 2002

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As the Commission is well aware, passage of Proposition 34 brought significant changes to various aspects of the Political Reform Act ("Act"). Among those changes is a new statute, section 85702 of the Government Code. Generally speaking, the new law prohibits certain but not all campaign contributions from lobbyists. The statute also prohibits an elected state officer or candidate for elected state office from accepting a contribution made by such a lobbyist. Determining when a lobbyist "makes" a contribution is an important regulatory issue.[1]

At its September 2001 meeting, the Commission held a pre-notice discussion of the issues surrounding implementation of section 85702. At that time, the Commission considered pre-notice language proposed by staff. The Commission directed staff to hold an interested persons' meeting to gather additional public input and propose recommendations at a later date.[2] This memorandum discusses the issues before the Commission with respect to implementation of section 85702 and proposes an emergency regulation crafted to carry out the Commission's interpretation. Because understanding the evolution of the lobbyist ban is critical to interpreting the current statute, a detailed discussion of the Act's history of regulating lobbyist contributions prefaces the main discussion.

JUSTIFICATION FOR EMERGENCY REGULATION

Initially set for discussion on the Commission's August regulatory calendar, this matter has been moved up to the March meeting to provide needed guidance to the public

[1] Section 85702, as the Commission is aware, is the subject of litigation involving this agency. In *Institute of Governmental Advocates v. Fair Political Practices Commission, et al.*, CIV. S-01-0859, a lobbyist interest group is challenging in federal court the constitutionality of the ban imposed by section 85702. The Commission won a summary judgment motion dismissing that action at the trial court level. The plaintiffs have since filed a notice of appeal and the case is pending in the Ninth Circuit Court of Appeals.

[2] An Interested Persons' meeting was held at the Commission's offices on October 18, 2001.

in time for the November general election. Staff proposes the Commission adopt an emergency regulation resolving section 85702 issues. As an emergency regulation, any decisions made by the Commission may be revisited when the regulation comes back for permanent adoption.

I. BACKGROUND

A. Introduction

Proposition 34 added section 85702 to the Act:

> "An elected state officer or candidate for elected state office may not accept a contribution from a lobbyist, and a lobbyist may not make a contribution to an elected state officer or candidate for elected state office, if that lobbyist is registered to lobby the governmental agency for which the candidate is seeking election or the governmental agency of the elected state officer."

Section 82024, already part of the Act, defines "elective state office" as follows:

> "'Elective state office' means the office of Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, Member of the Legislature, member elected to the Board of Administration of the Public Employees' Retirement System, and member of the State Board of Equalization."

Proposition 34 repealed former section 85704, a similar prohibition enacted with passage of Proposition 208 and later enjoined by a federal court. Section 85704 prohibited campaign contributions and officeholder account contributions "from, through, or arranged by" a state or local registered lobbyist.[3] Section 85702, in contrast, does not prohibit contributions "through" or "arranged" by a lobbyist.[4]

The intent of this provision is to prevent actual and apparent corruption and undue influence by largely severing the tie between lobbyists and fundraising by candidates.[5]

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[3] Former section 85704 read:
"**85704.** No elected officeholder, candidate, or the candidate's controlled committee may solicit or accept a campaign contribution or contribution to an officeholder account from, through, or arranged by a registered state or local lobbyist if that lobbyist finances, engages, or is authorized to engage in lobbying the governmental agency for which the candidate is seeking election or the governmental agency of the officeholder."

[4] Note also that the prohibition of former section 85704 also applied to "a registered … local lobbyist." The Act otherwise does not make (nor made after Proposition 208) reference to or provision for locally registered lobbyists. Thus, this provision applied to "local" lobbyists if the local jurisdiction adopted a lobbyist registration scheme. In contrast, section 85702 makes no such provision for local lobbyists.

(*Institute of Governmental Advocates, et al., v. Fair Political Practices Commission* (E.D. Ca. 2001) 164 F.Supp.2d 1183, 1189.) The prohibition in section 85702 covers campaign contributions but only refers to lobbyists. "Lobbyist," "lobbying firm," and "lobbyist employer" are all terms with specific meanings in the Act. Therefore, section 85702, on its face, applies only to lobbyists.[6]

Presumably, contributions "from" a lobbyist are those made with the lobbyist's personal funds. This presumption is based in large part on the historical development of the prohibition, as discussed below. Essentially, earlier provisions which banned lobbyists from advising clients and others on contributions from client funds either were declared unconstitutional or enjoined from enforcement. Accordingly, the Commission concluded at the September 2001 meeting that the statute must be read narrowly to apply to the lobbyist's "personal" funds.

B. The Lobbyist Contribution Ban – A Historical Narrowing of the Ban's Scope

Prior to section 85704 (of Proposition 208) and now section 85702 (of Proposition 34), the Act in 1974 had a provision, 86202, which also addressed lobbyist contributions:

> "**86202.** It shall be unlawful for a lobbyist to make a contribution or to act as an agent or intermediary in the making of any contribution, or to arrange for the making of any contribution by himself or by any other person."

Section 86202 was broader than the current version, barring a lobbyist from making, acting as an intermediary, or arranging a contribution by himself or another. The Commission originally interpreted the "to arrange for" language in Section 86202 to forbid a lobbyist from advising his or her employer on making a contribution, if that advice "was a causal element" in the making of the contribution. (*Institute of Governmental Advocates v. Younger* (1977) 70 Cal.App.3d 878, 881.) A superior court enjoined the Commission from enforcing this interpretation because it violated the First Amendment speech rights of the lobbyist and lobbyist's employer; the Second District Court of Appeals affirmed. (*Id*., at p. 884.)

Proposition 9 Version Found Unconstitutional for Three Reasons

Section 86202 eventually was declared unconstitutional in *Fair Political Practices Commission v. Superior Court* (1979) 25 Cal.3d 33, 45, on the ground that the prohibition against the making of contributions by lobbyists impermissibly infringed the lobbyists' First Amendment right to associate with candidates by making contributions. Specifically, the Court found that there was a compelling state interest for the rule, namely "...rid[ding] the political system of both apparent and actual corruption and

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[5] Under the Act, a "candidate" includes officeholders. (§§ 82007, 84214; Reg. 18404, subd. (d).)

[6] Staff recently came to this conclusion in *Churchwell* Advice Letter, A-01-115.

improper influence." The Court also found, however, that the rule was not narrowly tailored to serve that interest for three reasons: (1) the rule barred all contributions to all candidates, even ones the lobbyist might never have opportunity to lobby; (2) "lobbyist" was defined broadly in the Act; and (3) the rule did not distinguish between large and small contributions. (*Id.*) Section 86202 was repealed in 1984. (Stats. 1984, ch. 161.)

Prop.208 Ban Applies to Contributions over which the Lobbyist Has Control

More narrowly tailored, Proposition 208's section 85704 was enjoined by a federal court in January 1998, along with many other provisions of that measure. Section 85704 (see footnote 2, above) prohibited only contributions from a lobbyist who "finances, engages, or is authorized to engage" in lobbying of the agency associated with the recipient. That statute, unlike the current section 85702, barred not only contributions *from* a lobbyist but also contributions "*through or arranged by*" a lobbyist. Prior to the injunction of section 85704, the Commission adopted Regulation 18626 interpreting "from, through, or arranged by" a lobbyist.[7] In this regulation, the Commission defined a contribution "arranged by" a lobbyist as follows:

> "(c)(1) A contribution is "arranged by" a lobbyist when the lobbyist exercises primary control over the contribution, including the decisions whether to make a contribution, to whom to make the contribution, or the amount of the contribution." (Reg. 18626, repealed May 2001.)

Thus, the Commission interpreted the ban to apply to funds under the lobbyist's "control."

While the statute was preliminarily enjoined by the federal court, nowhere in the Court's opinion is section 85704 discussed, other than to note its existence when describing the various aspects of Proposition 208. (*California ProLife Council PAC v. Scully* (1998) 989 F.Supp. 1282, 1292.) In its findings of fact, the Court found that lobbyists were "severely limited in their ability to fully participate in conversations" regarding contributions their clients might make. (Findings of Fact, 4/5/99, #444.) The Court also found lobbyists' speech and associational rights severely limited. (*Id.*) Unlike the Court in *Fair Political Practices Commission v. Superior Court*, *supra,* however, the Proposition 208 Court did not discuss those findings with respect to any particular ruling regarding the lobbyist ban of section 85704. Before the Court could finally adjudicate the constitutionality of this provision, Proposition 208 was repealed by Proposition 34.

C. Section 85702

As described earlier, section 85702 prohibits lobbyists from making contributions to candidates and officeholders they are registered to lobby. Again, section 85702 states:

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[7] This regulation was repealed by the Commission, along with other Proposition 208 regulations, in May of 2001.

> "**85702.** An elected state officer or candidate for elected state office may not accept a contribution from a lobbyist, and a lobbyist may not make a contribution to an elected state officer or candidate for elected state office, if that lobbyist is registered to lobby the governmental agency for which the candidate is seeking election or the governmental agency of the elected state officer."

Court Declares Section 85702 Constitutional

Last year, the Commission was named in a lawsuit, *Institute of Governmental Advocates, et al., v. Fair Political Practices Commission, supra*, challenging the constitutionality of section 85702 in federal district court. On September 17, 2001, after the Commission's September meeting, District Court Judge Frank Damrell, Jr. issued an opinion upholding the constitutionality of section 85702 in the face of the challenge by lobbyists who claimed that the statute violated their First Amendment rights of freedom of speech and association, and their Fourteenth Amendment right to equal protection. In ruling the statute was constitutional, the Court stressed several key points.

First, the Court found section 85702 was narrower than the statute overturned in 1979, stating:

> "First, Section 85702 does not prohibit contributions by all lobbyists to all candidates. Rather, by its express terms, Section 85702 only prohibits contributions by lobbyists, if the lobbyist is *registered* to lobby the office for which the candidate seeks election; that is, to those persons the lobbyist *will be* paid to lobby." (*Institute of Governmental Advocates, et al., v. Fair Political Practices Commission, supra, 164* F.Supp.2d at p. 1190; emphasis in original.)

The Court next found that the definition of "lobbyist" had changed dramatically since 1979, omitting certain activities and individuals covered by the previous definition contained in Regulation 18239. (*IGA v. FPPC, supra*, 164 F.Supp.2d at p. 1190.) Last, the Court found that a ban instead of a monetary limitation was not fatal given the importance of the state's interest in preventing the appearance of corruption and the fact that the Legislature is effectively "in session" year-round. The Court summed up its conclusion that the statute was "narrowly tailored," emphasizing that the statute no longer prohibited a lobbyist from advising clients, stating:

> "For example, registered lobbyists may directly contribute to state candidates or officeholders whom they are *not* registered to lobby, and they can contribute to their own campaigns if they seek elective office. Registered lobbyists may also contribute to political parties or PACs for purposes other than contributions to candidates or state officers they are registered to lobby. Additionally, lobbyists can spend unlimited amounts in 'independent expenditures' on behalf of candidates or elected state officers, even those they are registered to

> lobby; they can volunteer their services on behalf of any incumbent or candidate, whether or not they are registered to lobby that individual. Registered lobbyists may also advise their employers about making political contributions to any candidate or elected state officer. Further, an individual registered to lobby an administrative agency is not prohibited from contributing to candidates for the Legislature or statewide elective office unless those candidates are members of the specific administrative agency the lobbyist is registered to lobby; similarly, a registered lobbyist would not be prohibited from contributing to a candidate for a local election unless the candidate is a member of the specific agency the lobbyist is registered to lobby." (*Id*., at pp. 1192-1193; emphasis in original.)

Accordingly, the Court concluded the statute reasonably treats lobbyists differently from other members of the public and therefore is constitutional. (*IGA v. FPPC, supra*, 164 F.Supp.2d, at p. 1195.)

D. Commission Decisions in September

At its September 2001 meeting, the Commission considered pre-notice regulatory language presented by staff. In discussing the various aspects of draft regulation 18572 at that meeting, the Commission made several determinations and gave feedback to guide staff on further drafting. That input is summarized as follows:

- The ban prohibits a lobbyist's use of "personal funds;"
- Most commissioners viewed the prohibition as being fairly narrow and focused on contributions from a lobbyist directly to a candidate;
- A regulation containing a laundry list of examples of permissible behavior would be disfavored;
- The ban does not prevent contributions from lobbyists to political parties;
- The ban may or may not apply to committees comprised solely of lobbyists;
- The Commission was not inclined to read the aggregation rules of section 85311 to apply to lobbyist contributions, though further consideration of that issue is necessary.

II. SCOPE OF THE CURRENT LOBBYIST CONTRIBUTION BAN AND PROPOSED REGULATION 18572

The question to be decided by the Commission is how far, if at all, the ban extends beyond the purely personal funds of the lobbyist. For instance, may two lobbyists form a political action committee for the sole purpose of supporting a candidate the lobbyists are registered to lobby? May a lobbyist who is prohibited from making a contribution from his or her personal checking account nevertheless write a check from his or her lobbying business account? May a lobbyist contribute funds under his direction and control?

Statutory attempts to carve out a prohibition on lobbyist contributions have steadily narrowed. Significantly, the ban no longer applies to contributions merely "arranged" by a lobbyist. (Former §§ 85704 and 86202.) Rather, the ban applies only to contributions "made" by a lobbyist. (§ 85702.) While the argument might be made that the deletion of the word "arranged" means the ban no longer applies to funds the lobbyist merely "controls," it may be argued that some funds subject to the lobbyist's "control" remain subject to the ban. Draft regulation 18572 is intended to implement the Commission's decisions made with respect to the scope of section 85702. There are three primary decisions reflected in the draft. Each subdivision and respective decision is described below.

A. Subdivision (a) of Proposed Regulation 18572

This language implements the Commission's earlier determination that the statute applies to the lobbyist's personal funds.

Elemental to understanding and applying the statute is a definition of what it means to "make" a contribution, and what a "contribution" is. This subdivision describes the elements of the act of making a contribution and refers to the Commission's definition of "contribution" contained in section 82015 and Regulation 18215. In so doing, the proposed regulation uses existing principles already interpreting similar provisions in the Act.

Decision 1: In the bracketed language, reference also is made to Regulation 18533, which governs contributions made from joint checking accounts.[8] Because it is conceivable that a lobbyist's spouse, or another, may wish to make contributions, the proposed regulation refers to the Commission's established treatment of such contributions. This sentence also defines the subdivision's earlier use of the term "personal funds" to mean those funds or assets which are the personal property of the "lobbyist." This language is virtually identical to definitional language already found in

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[8] Regulation 18533 states:

"**18533. Contributions from Joint Checking Accounts**

"(a) A contribution made from a checking account by a check bearing the printed name of more than one individual shall be attributed to the individual whose name is printed on the check and who signs the check, unless an accompanying document directs otherwise. The document shall indicate the amount to be attributed to each contributing individual and shall be signed by each contributing individual whose name is printed on the check. If each individual whose name is printed on the check signs the check, the contribution shall be attributed equally to each individual, unless an accompanying document signed by each individual directs otherwise.

"If the name of the individual who signs the check is not printed on the check, an accompanying document, signed by the contributing individuals, shall state to whom the contribution is attributed.

"(b) For purposes of this regulation, each contributing individual is a 'person' as defined in Government Code section 85102(b) and is subject to the contribution limitations set forth in Government Code section 85305(c)(1).

"(c) If the individual who signs the check or accompanying document is acting as an intermediary for another contributor, this regulation shall not apply and Regulation 18432.5 shall apply instead."

regulation 18611, regarding lobbyist reporting of contributions. (Reg. 18611, subd. (b)(3).) **Staff recommends the Commission adopt the bracketed language in "Decision 1."**

B. Subdivision (b) of the Proposed Regulation

This subdivision presents a slightly broader approach. The argument for it is as follows:

The language of section 85702 states a lobbyist may not "make" a contribution to a candidate covered by the statute. That language may encompass contributions made by a lobbyist with funds which the lobbyist controls, such as those of a sole proprietorship belonging to the lobbyist. The authority for such a construction derives from the statute's use of general terms such as "lobbyist" and "make" without additional limiting language. Moreover, it can be argued that interpreting the language to apply to funds the lobbyist controls, such as those of a business owned by the lobbyist, is consistent with the statute's intent to eliminate the appearance of corruption and improper influence when a lobbyist makes contributions to candidates he or she is registered to lobby.

In the ballot pamphlet materials before the voters in November of 2001 when Proposition 34 passed, the title and summary stated the proposition "[p]rohibits lobbyists' contributions to officials they lobby." (Official Voter Information Guide, 2000 General Election Ballot Pamphlet, at p.12.) The analysis by the Legislative Analyst states Proposition 34 "prohibits contributions from lobbyists to state elective officials or candidates under certain conditions." (*Id*., at p. 13.) Proponents of Proposition 34 argue in the ballot pamphlet that "[p]roposition 34 bans lobbyists from making ANY contribution to any elected state officer they lobby" (*Id*., at p.16, emphasis in original) and that "[l]obbyists will be forbidden from making contributions." (*Id*., at p.17.) Other than these statements, nothing in the voter information guide sheds further light on the scope of section 85702 or indicates an intent to limit the lobbyist prohibition to solely personal funds.

On the other hand, the argument can be made that the Legislature intended a narrow construction of the statute given the nature of previous incarnations of the statute that have been declared unconstitutional. For instance, the deletion of Proposition 208's prohibition on contributions "through" or "arranged by" a lobbyist can be said to indicate the legislature's intent to prohibit *only* those contributions from personal funds.

Two points may be made in response to this argument. First, the "legislative intent" in construction of a voter-passed initiative is not the intent of the Legislature but the intent of the *voters*. (*Taxpayers to Limit Campaign Spending v. F.P.P.C.* (1990) 51 Cal.3d 744, 764.) Regardless of what the legislative drafters may have intended, if that interpretation was not made known to the voters then it cannot be said that the voters embraced or shared that interpretation. (*Id*., at p. 764, fn. 10.) Second, a court already has found section 85702 constitutional even where the statute was given a conservatively broad interpretation in the context of telephone advice by staff prior to the Commission's

consideration of this statute.[9] Because the statute does not prevent a lobbyist from advising clients about contributions and because it does not prevent contributions to those the lobbyist is not registered to lobby, section 85702 was not found to suffer the same constitutional infirmity of previous incarnations.

The draft language bracketed in **"Decision 2"** does not purport to apply the contribution ban to funds that belong to a client. Rather, the individual subdivisions (1) through (3) describe funds that are presumed to be made by the lobbyist if certain criteria are met. The language on lines 13 through 20 of **Decision 2** propose three scenarios in which a lobbyist will be deemed to make a contribution prohibited by section 85702.

Subdivision (b)(1) prohibits a lobbyist from using funds from a business, including a lobbying firm, that is wholly owned by the lobbyist. The theory here is that the appearance of corruption is equally as strong when the funds come from the lobbyist's business as when they come from his or her personal account. The clause "and the lobbyist directs the making of the contribution" is limiting language to allow a lobbyist's business to make contributions if the lobbyist does not direct the making of the contribution. Recent figures indicate that of 411 active lobbying firms registered with the Secretary of State, more than half, 235, are sole lobbyist firms.

Subdivision (b)(2) prohibits contributions from committees comprised solely of lobbyists. This is designed to close a potential loophole whereby two lobbyists could simply form a committee to endorse a candidate, put their personal funds into the committee and then make contributions from the committee's funds.

Subdivision (b)(3) clarifies that the intermediary provision of section 84302 applies in the context of potential lobbyist contributions, as well. Thus, a person making a contribution on behalf of a lobbyist would have to disclose the lobbyist as the actual contributor. Because this subdivision does not add to existing obligations under the law, the subdivision is more informative than substantive.

Staff does not make a recommendation on these issues. If the Commission determines the scope of section 85702 does not extend to any funds beyond the personal funds of a lobbyist, the Commission may nevertheless decide to keep the language of subdivision (b)(3), which is a restatement of current law.

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[9] For instance, the Court rejected the assertion that section 85702 bans "all" contributions by lobbyists. In rejecting that assertion, the Court noted that under then-current advice by Commission staff, a lobbyist could "also contribute to political parties or PACs for purposes other than contributions to candidates or state officers they are registered to lobby." (*IGA v. FPPC, supra*, 164 F.Supp.2d at pp. 1192-1193.) The current draft regulation makes no limitation on a lobbyist's contributions to political parties or general purpose committees (PACs).

C. Subdivision (c) of Proposed Regulation 18572

Finally, staff has attempted to determine whether the lobbyist contribution ban applies to funds under the lobbyist's direction and control. Arguably, the authority for applying section 85702 to funds under the lobbyist's control is section 85311, also part of Proposition 34. Section 85311 governs the aggregation of contributions by affiliated entities for purposes of determining whether contribution limits have been met or exceeded. The Commission determined recently that section 85311 has a narrow scope, attributing to a person only those contributions that the person "directs and controls." For instance, subdivision (b) of 85311 provides:

> "(b) The contributions of an entity whose contributions are directed and controlled by any individual shall be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual."

To summarize, if one person effectively dictates the contribution decisions of another, the law requires that their contributions be "aggregated" as the contributions of a single person. In a hypothetical scenario, suppose Carl Contributor (not a lobbyist) is a sole proprietor of a grocery store and makes a $1,000 contribution from the store's business funds to Candidate Kim, a friend running in the primary election for a seat in the Assembly. A week earlier, Carl made a $2,000 contribution to Kim from Carl's personal checking account. According to subdivision (b) of section 85311 above, the contribution from the store's funds will be aggregated with Carl's personal funds, and Carl will have reached the $3,000 per election limit for contributions in an Assembly race. (§ 85301, subd. (a).) This "affiliated entity" provision supports contribution limits by preventing donors from using third party funds to give money not allowed by law.

With respect to the lobbyist ban, the question arises whether a lobbyist's contributions from funds he or she directs or controls are also attributed to the lobbyist personally. Put another way, is a contribution from an entity, where the contribution is directed and controlled by a lobbyist, prohibited because section 85311 may attribute that contribution to the lobbyist?

An argument in favor of applying section 85311 to lobbyists is the notion that section 85311 helps to prohibit an end-run around the contribution limits. In addition, statements in the voter pamphlet and the purposes of the Act suggest that section 85702 was not intended to create a mechanism by which lobbyists who, ostensibly banned from contributions to certain persons, could contribute nonetheless through other funds they control, such as their own lobbyist firm funds or other business funds. (For a discussion of the pamphlet arguments, see p. 9, *supra*.)

Was Section 85311 Narrowed by Senate Bill 34?

Section 85311 *used* to apply "[f]or purposes of this chapter," meaning chapter five, which contains the contribution limits in general and the lobbyist prohibition in

particular. (§ 85311, subd. (a), as enacted.) Thus, as enacted by the voters in Proposition 34, the aggregation rules of 85311 arguably applied to all of the provisions of chapter five, including the lobbyist ban. Section 85311 was amended by Senate Bill 34 last year, however, and now narrows section 85311's application "[f]or purposes of the contribution limits of this chapter...." (§ 85311, subd. (a).) According to the drafters of the amendment, the purpose of the amendment was to clarify that the aggregation rules of section 85311 apply only for purposes of determining whether a contributor has reached the contribution limits of Chapter 5, as opposed to applying to the reporting rules in that chapter that govern how and when entities must file their disclosure reports.[10]

The question then becomes whether the lobbyist contribution prohibition is a "contribution limit" under section 85311's purview. Webster's defines "ban" and "limit" as follows:

> "**ban.** ... **2** to prohibit esp. by legal means or social pressure the performance, activities, dissemination, or use of ...."
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> "**limit.** ... **2a:** something that bounds, restrains or confines ... **5:** a prescribed maximum or minimum amount, quantity, or number ... ." (Webster's 3d. New Internat. Dict. (1993) pp. 169, 1312.)

Arguments can be made on both sides as to whether something is a ban or a limit. Indeed, this issue provoked extensive briefing on both sides of the question during the Proposition 208 litigation. Ultimately, the court deciding Proposition 208's fate did not give an answer to that question and the Court in *IGA* did not decide the matter. If the Commission believes that the amended language of section 85311 indicates an intent to limit its application only to the contribution limits of sections 85301 to 85303, then a lobbyist would be able to direct and control contributions from funds belonging to other entities. On the other hand, if the Commission determines section 85311 is applicable to section 85702, the lobbyist would be barred from making any contributions from funds the lobbyist directs and controls.

"Decision 3" contains optional language to implement the Commission's determination whether the concept of "direction and control" in the affiliated entities statute, section 85311, applies to lobbyists. If the Commission determines section 85311 does not apply to section 85702, then proposed subdivision (c) must be deleted. On the other hand, if the Commission determines otherwise, the language in subdivision (c) indicates that where a lobbyist makes contributions from funds over which he or she has direction and control, those funds will be attributed to the lobbyist. ***Staff makes no***

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[10] Thus, it appears the amendment to section 85311 was not made with regard to section 85702 in mind. The bill analyses propounded by the respective policy committees as the bill was considered by the Legislature do not mention the lobbyist ban with respect to the amendment of section 85311. Of nine committee and floor analyses, seven contained no reference at all to the amendment of section 85311. Two of the early Senate Floor analyses contained a list of changes by the bill, including "[c]larify[ing] that the definition of "affiliated entities" is intended for purposes of the contribution limits." (Sen. Rules Cmte, Floor Analysis, Third Reading, 4/03/01 and 04/04/01.)

recommendation with respect to the interpretation of section 85311 and whether the prohibition in section 85702 is a "limit" or "ban."

D. Lobbyist Registration Requirements

The previous draft regulation considered by the Commission contained language describing the process for determining whom a lobbyist is registered to lobby. Staff has determined that this language would be more suitable in a different regulation instead of regulation 18572, which concerns the scope of the lobbyist contribution ban. Accordingly, this language has been deleted from the current draft.